

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

MOTIO, INC.

Plaintiff,

v.

BSP SOFTWARE, LLC, and  
BRIGHTSTAR PARTNERS, INC.

Defendants.

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CIVIL ACTION NO. 4:12-CV-00647-RAS

JURY DEMANDED

**AMENDED RULE 26(f) JOINT CONFERENCE REPORT**

Plaintiff Motio, Inc. (“Motio” or “Plaintiff”) and BSP Software, LLC (“BSP”) and BrightStar Partners, Inc. (“BrightStar”) (collectively, “Defendants”), submit the following Amended Rule 26(f) Joint Conference Report:

***1. A factual and legal description of the case which also sets forth the elements of each cause of action and each defense;***

a. Plaintiff claims patent infringement under the United States Patent Act, 35 U.S.C. §§ 101 *et seq.* Plaintiff alleges that Defendants have infringed Plaintiff’s rights in U.S. Patent No. 8,285,678 (the “’678 Patent”) entitled “Continuous Integration of Business Intelligence Software” by providing, installing, making, using and/or selling BSP’s Integrated Version Control (“IVC”) and/or Integrated Control Suite (“ICS”) products. Plaintiff seeks injunctive relief, damages, costs and attorneys’ fees.

b. Defendants contend that they do not infringe any valid or enforceable claim of the ‘678 patent. Accordingly, Defendants have filed a Counterclaim seeking (1) a declaration that Defendants do not infringe the asserted claims of the ‘678 patent; (2) a declaration that the ‘678 patent is invalid as being anticipated by and/or unpatentable in

view of the prior art; and (3) a declaration that the '678 patent is unenforceable because of inequitable conduct. Defendants seek their attorney's fees and costs for having to defend against this baseless lawsuit.

**2. *The date the Rule 26(f) conference was held, the names of those persons who were in attendance and the parties they represented;***

A telephonic meeting was held on January 28, 2013, during which Kelly J. Kubasta of Klemchuk Kubasta LLP represented Plaintiff Motio, Inc. and Larry Phillips of Siebman, Burg, Phillips & Smith, LLP and John Lanza, Scott Kaspar, and Ruben Rodrigues, all of Foley & Lardner LLP, represented Defendants BSP Software, LLC and BrightStar Partners, Inc.

**3. *A list of any cases that are related to this case and that are pending in any state or federal court with the case numbers and court along with an explanation of the status of those cases;***

The parties are involved in an unrelated patent litigation pending in the Northern District of Illinois. In that litigation, BSP has alleged that certain of Motio's products infringe its patents, U.S. Patent Nos. 7,945,589 and 8,073,863. The Illinois litigation is in the midst of fact discovery and claim construction has not yet begun. *BSP Software, LLC v. Motio, Inc.*, Case No. 1:12-cv-02100 (N.D. Illinois, Eastern Division).

**4. *An agreed discovery/case management plan if agreement can be reached, which will be used by the court to prepare a Scheduling Order;***

See attached proposed Scheduling Order.

5. *A suggested date for the Final Pretrial Conference (see enclosed list of the court's available Final Pretrial Conference dates) at which time the trial will be scheduled;*

November 4, 2014

6. *The expected length of trial;*

Plaintiff estimates the length of trial to be five (5) days. Because Defendants have brought a Counterclaim, Defendants estimate the length of the trial to be eight (8) days.

7. *Whether the parties jointly agree to trial before a magistrate judge (the parties should seriously consider this option given that the undersigned judge is now setting jury trials approximately 11 months out from the date of the final pretrial);*

The parties do not consent to have their case proceed before a magistrate judge.

8. *Whether a jury demand has been made;*

Yes.

9. *The parties are directed to appear for the Management Conference at 10:30 a.m. on Tuesday, March 5, 2013 before U.S. District Judge Richard A. Schell at the United States Courthouse, 7940 Preston Road, Plano, Texas 75024.*

The parties acknowledge the scheduled date for the Management Conference.

Dated: March 13, 2013

Respectfully submitted,

/s/ Kelly J. Kubasta

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**Attorneys for Defendants BSP Software, LLC  
and BrightStar Partners, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 13, 2013, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Kelly J. Kubasta

Kelly J. Kubasta